

The TBT Agreement and the importance of transparency

Canada-Americas Trade Related Technical Assistance
(CATRTA) Workshop

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Objectives of the TBT Agreement

Pursuit of trade liberalization...

avoiding unnecessary
barriers to international
trade

non-discrimination
between like products

Members' right to regulate...

allowing Members to
pursue legitimate
objectives

allowing for legitimate
regulatory distinctions

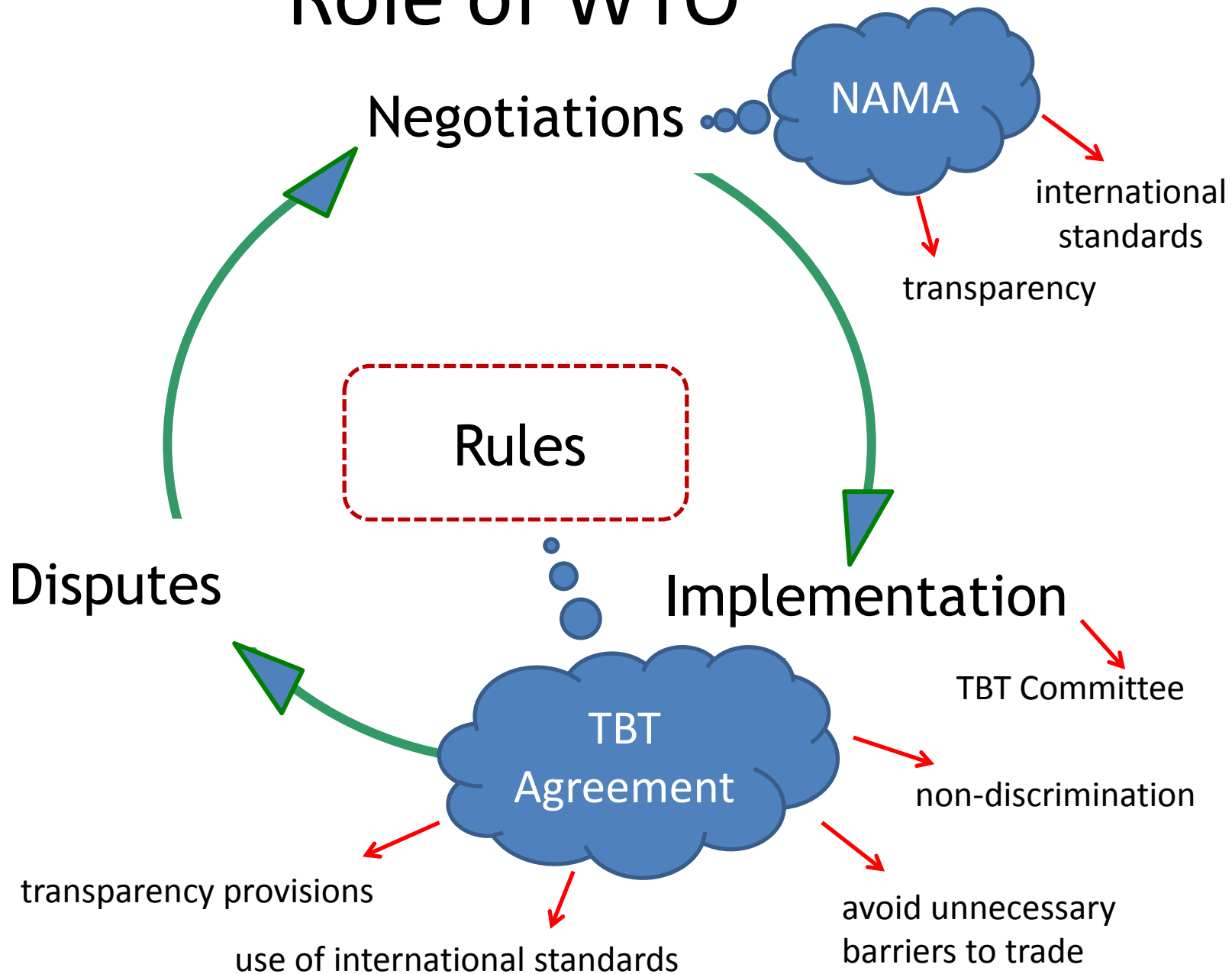


use of international standards

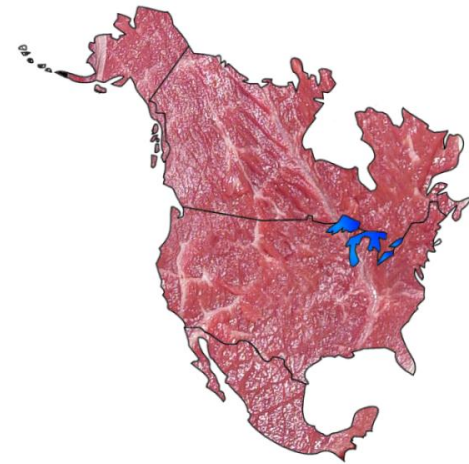
transparency



Role of WTO



A few important points arising from recent AB reports...



Technical regulations v. Standards

- Both relate to: product characteristics, terminology, symbols, packaging, marking, and labelling requirements
- In principle: **technical regulations are mandatory**, **standards aren't**, but this distinction can be messy (e.g. labelling requirements)
- Other aspects should be considered to make this determination:
 - Whether the measure consists of a law or a regulation enacted by a WTO Member
 - Whether it prescribes or prohibits particular conduct
 - Whether it sets out specific requirements that constitute the sole means of addressing a particular matter
 - Nature of the matter addressed by the measure.

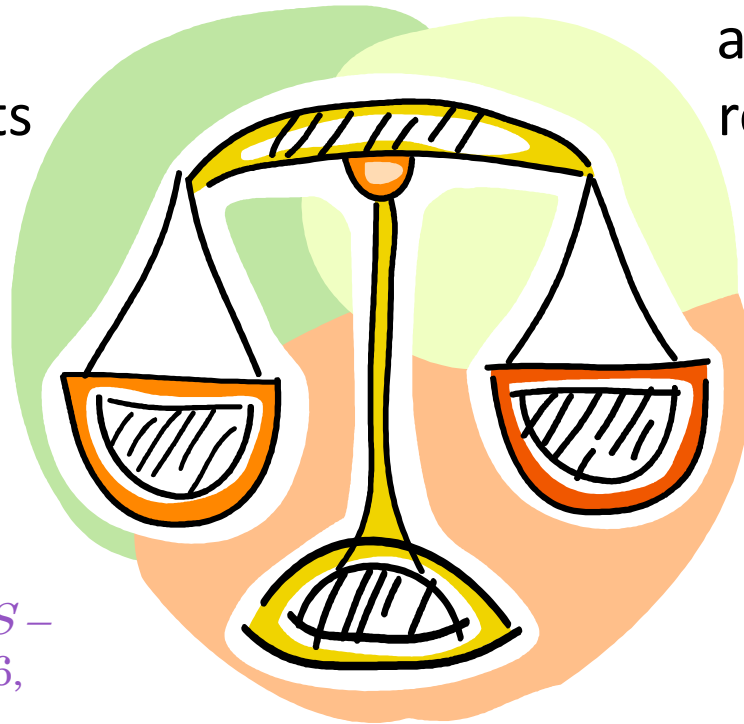
Non-discrimination Balance (Article 2.1)

Pursuit of trade liberalization...

non-discrimination
between like products

Members' right to regulate...

allowing for legitimate
regulatory distinctions



Appellate Body Report, *US –
Clove Cigarettes*, paras. 96,
109

even-handedness

(design, architecture, revealing
structure, operation, and application)



Unnecessary barriers to trade Balance (Article 2.2)

Pursuit of trade liberalization...

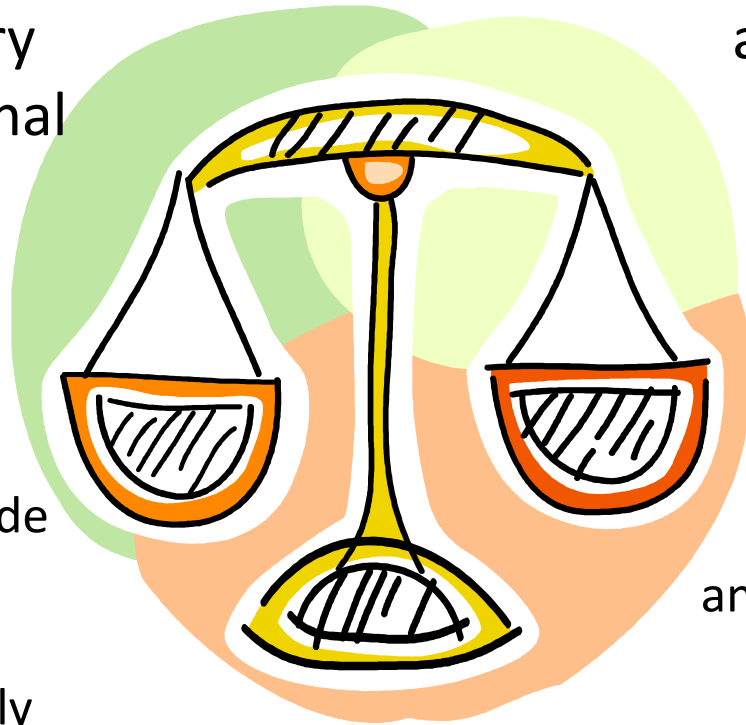
avoiding unnecessary
barriers to international
trade

comparison with less trade
restrictive alternative
measure / equivalent
contribution / reasonably
available

Members' right to regulate...

allowing Members to
pursue legitimate
objectives at self-
selected level of
fulfilment

nature of risks
and gravity of consequences
of non-fulfilment



Appellate Body Report, *US – Tuna II (Mexico)*, paras. 320 – 322;

TBT Committee Decision on *Principles for the Development of International Standards, Guides and Recommendations* (November 2000, G/TBT/9)

- “Subsequent agreement” ... a means of assisting in interpreting the terms "international standardizing/standards organization" *Appellate Body Report, US – Tuna II (Mexico), para. 372, 376*
 - **Transparency:** work programme/proposal accessibility, adequate time and opportunity for comments;
 - **Openness:** all Members have right to participate at all levels of standard setting;
 - **Impartiality and consensus:** no bias against any Member, region, supplier & consensus procedures;
 - **Relevance and effectiveness:** respond to regulatory and market needs, as well as scientific and technological developments in various countries; no negative impact on competition or innovation; performance-based;
 - **Coherence:** avoid duplication/overlap with other international standardizing bodies, through co-operation and coordination;
 - **Development dimension:** promotion of developing countries' participation in international standards; take into account constraints on developing countries.

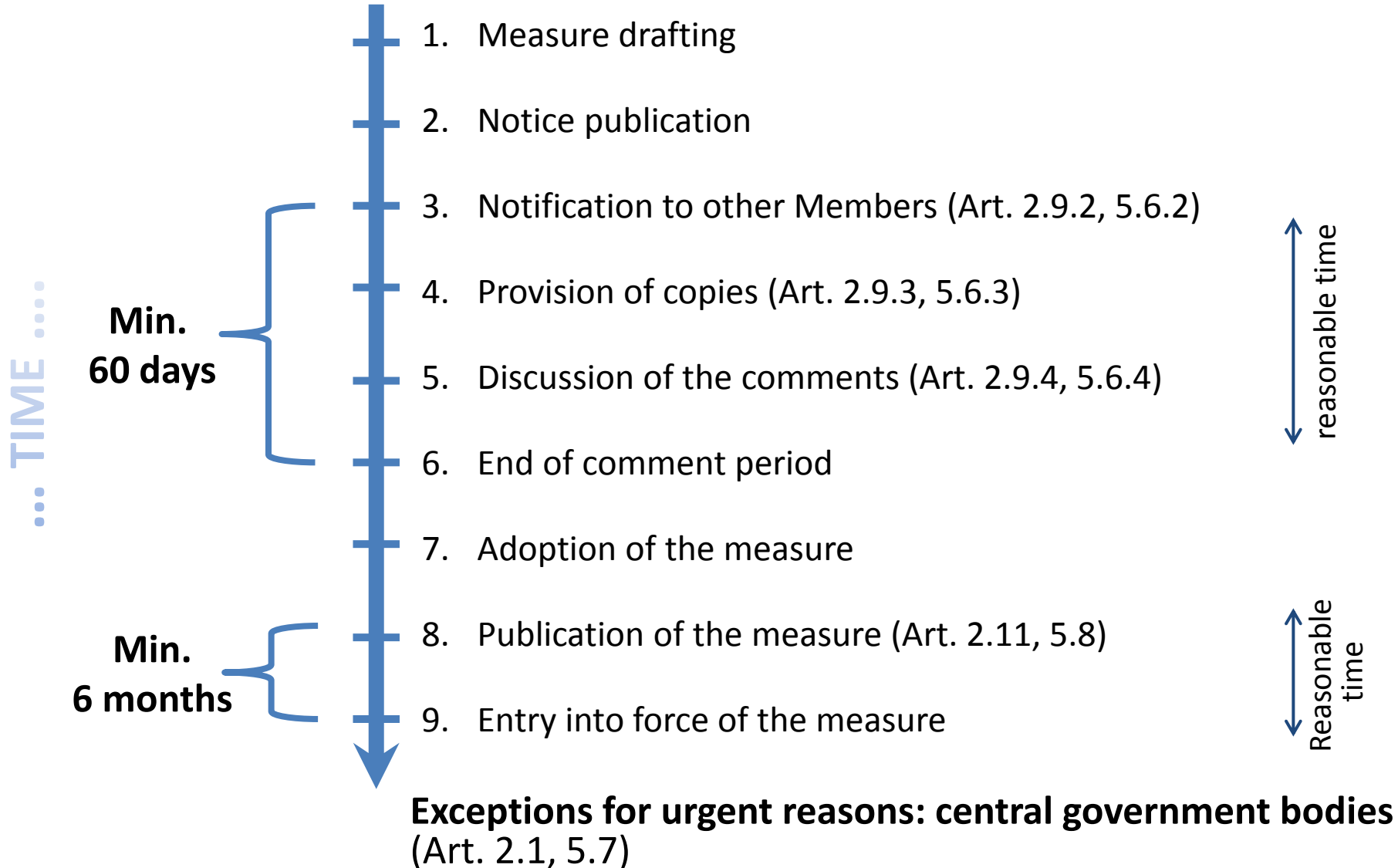
International standardizing bodies

- Body that has **recognized activities in standardization** and whose membership is **open** to the relevant bodies of at least all Members
 - “recognized activities” in standardization... but not necessarily principal function (could be a single standard)
 - “**Open**” at every stage of the standard development to the relevant bodies of at least all Members
 - WTO Members are **aware, or have reason to expect**, that the international body in question is **engaged in standardization activities**
 - but standardization need not be body’s sole activity
 - the larger the number of countries that participate in development of a standard, the more likely it can be said that the respective body's activities in standardization are “recognized”; likewise if Committee Decision principles are followed in development of standard

Transparency

- Implementation!
- Transparency is a crucial part of GRP
- Transparency provisions are basis of avoiding unnecessary barriers and discrimination in TBT measures

Notification Timeline



Transparency

- Helps solving information problems with NTMs
- Implementation of transparency provisions about:
 - developing expertise and capacity to analyse measures in export markets
 - taking advantage of rights provided to WTO Members, to gather information and work to influence regulatory environments in export markets.
- **Governments must devote sufficient resources and ensure high-level engagement on transparency ... or risk exporters losing their way trying to navigate through a maze of NTMs**

Notifications of technical regulations and conformity assessment procedures

